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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SANDRA PREZGAY, Individually and
On Behalf of All Similarly Situated
Individuals

Plaintiffs,

vs.

COX COMMUNICATIONS, COX
COMMUNICATIONS LAS VEGAS, INC.,
d/b/a COX COMMUNICATIONS,
COX NEVADA TELECOM, LLC,
COX COMMUNICATIONS, INC.,
COX ENTERPRISES, INC., COXCOM,
INC., d/b/a COX COMMUNICATIONS
ARIZONA, COX COMMUNICATIONS
HOLDINGS, INC., and COX
COMMUNICATIONS EBD HOLDINGS
INC.

Defendants

CASE NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

NOW COMES Plaintiff, Sandra Prezgay, individually and as representative of all similarly situated individuals, and brings this Class Action Complaint against Defendants, Cox Communications, Cox Communications Las Vegas, Inc., d/b/a Cox Communications, Cox Nevada Telcom, LLC, Cox Communications, Inc., Cox Enterprises, Inc., CoxCom, Inc., d/b/a Cox Communications Arizona, Cox Communications Holdings, Inc., and Cox Communications EBD Holdings, Inc., (hereinafter collectively referred to as “Cox”), and submits and alleges the following:

INTRODUCTION

1. Plaintiff brings this class action on behalf of all persons who purchase premium cable services (hereinafter the “Class”) from Defendant, Cox. Cox uses an unlawful tying arrangement between its premium cable services and “cable boxes” to force its customers, including Plaintiff and the Class, to pay a monthly rental fee for the cable boxes in addition to the fee that customers already pay for the premium services.
2. Cox’s actions constitute an unlawful tying agreement which impermissibly restrains trade in the United States and, therefore, violates 15 U.S.C. §§ 1 and 2.

PARTIES

3. Plaintiff, Sandra Prezgay, is a citizen of the State of Nevada and resides in Las Vegas, Nevada, in the County of Clark.
4. At all times material hereto, Sandra Prezgay has been a subscriber to premium cable services from Cox.
5. Plaintiff, Sandra Prezgay, brings this action on his own behalf and on behalf of all of the similarly situated persons who are defined to be the following:

All persons in the United States who subscribe or have subscribed to Cox for premium cable television services and pay or have paid an additional monthly fee for the accompanying cable

1 box.

- 2 6. Excluded from the Class are Cox; officers, directors, board members, or employees of Cox; any
3 entity in which Cox has a controlling interest; affiliates, legal representatives, attorneys, heirs or
4 assigns of Cox; any federal, state or local government entity; and any judge, justice, or judicial
5 officer presiding over this matter and the members of their immediate families and judicial
6 staffs. Plaintiff reserves the right to modify or amend this Class definition if discovery and/or
7 further investigation reveal the necessity to do so.
8
- 9 7. Defendant, Cox Communications, is owned by defendant, Cox Communications Las Vegas,
10 Inc., a Delaware corporation with its principal place of business located at 1400 Lake Hearn
11 Drive, Atlanta, Georgia 30319.
12
- 13 8. Defendant, Cox Communications Las Vegas, Inc., is a Delaware corporation with its principal
14 place of business located at 1400 Lake Hearn Drive, Atlanta, Georgia 30319.
15
- 16 9. Defendant, Cox Nevada Telcom, LLC, is a Delaware limited liability company, whose
17 managing member is Cox Communications Las Vegas, Inc., 1400 Lake Hearn Drive, Atlanta,
18 Georgia 30319.
19
- 20 10. Defendant, Cox Communications Holdings, Inc., is a Delaware corporation with its principal
21 place of business located at 1400 Lake Hearn Drive, Atlanta, Georgia 30319.
22
- 23 11. Defendant, Cox Communications EBD Holdings, Inc., is a Delaware corporation with its
24 principal place of business located at 1400 Lake Hearn Drive, Atlanta, Georgia 30319.
25
- 26 12. Defendant, Cox Communications Arizona, is owned by defendant, CoxCom, Inc., a Delaware
27 corporation with its principal place of business located at 6205 Peachtree Dunwoody Road,
28 Atlanta, Georgia 30328.

1 13. Defendant, Cox Communications, Inc. is a Delaware corporation with its principal place of
2 business located at 1400 Lake Hearn Drive, Atlanta, Georgia 30319.

3 14. Defendant, CoxCom, Inc., d/b/a Cox Communications Arizona, is a Delaware corporation with
4 its principal place of business located at 6205 Peachtree Dunwoody Road, Atlanta, Georgia
5 30328.
6

7 15. Defendant, Cox Enterprises, Inc., is a privately owned Delaware corporation with its principal
8 place of business located at 6205 Peachtree Dunwoody Road, Atlanta, Georgia 30328.

9 16. At all times relevant hereto, each of the Defendants acted as the agent of each of the other
10 Defendants.
11

12 JURISDICTION AND VENUE

13 17. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 in that Plaintiff, on his own
14 behalf and on behalf of the Class, asserts claims under 15 U.S.C. §§ 1 and 2.

15 18. Venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1391 and 15 U.S.C. § 22.
16

17 BACKGROUND

18 19. Cox Communications, Inc. is the third largest provider of cable TV services in the United
19 States. It boasts nearly 6 million customers, 8.3 billion dollars in revenue, and 22,899
20 employees.
21

22 20. Cox Enterprises, Inc. is a leading communications, media and automotive services company. In
23 its 2007 Annual Report, it posted consolidated revenues (including its subsidiaries) of 15 billion
24 dollars.
25

26 21. Cox Communications, Inc. is a wholly owned subsidiary of Cox Enterprises, Inc. that manages
27 the sale of cable TV services.
28

- 1 22. Cox offers cable services to customers for a monthly fee based on the type of services provided.
- 2 23. Plaintiff and the members of the Class purchased additional premium services from Cox
- 3 including, but not limited to, high definition (“HD”) television services, digital cable services,
- 4 On-Demand services, digital video recorder (“DVR”) services, and premium movie channels
- 5 such as HBO, Showtime and Cinemax.
- 6
- 7 24. In exchange for the “premium” services, Cox customers, including Plaintiff and members of the
- 8 Class, pay a higher monthly fee than Cox customers who only purchase standard cable services.
- 9
- 10 25. In addition to the higher fee charged by Cox for “premium” services, Cox also charges
- 11 purchasers of “premium” services for what Cox terms “Digital service/Digital Gateway” and
- 12 also for what Cox terms a “Digital Converter” or in the case of HD service, “Digital Converter
- 13 HD.” These charges amount to “rental” fees associated with the cable boxes and/or converter
- 14 boxes that filter the signal from the TV cable to the television set.
- 15
- 16 26. Cox forces Plaintiff and members of the Class to rent the boxes instead of offering the option to
- 17 buy them or allowing Plaintiff and members of the Class to purchase the boxes directly from
- 18 another source (i.e. directly from the manufacturer) even though the boxes perform the same
- 19 function when bought on the open market. Consequently, Cox unlawfully ties its premium
- 20 cable services to the cable boxes which forces Plaintiff and the members of the Class to rent the
- 21 cable boxes instead of purchasing them, even though the amount paid in rental fees in less than
- 22 a year’s time would easily cover the cost of purchasing the boxes outright.
- 23
- 24 27. Although cable boxes are manufactured by many different companies, Motorola and Scientific
- 25 Atlanta dominate the market and sell their cable boxes to various cable companies including
- 26 Cox. If not for the tying of the premium cable services to the cable box, Plaintiff and members
- 27
- 28

- 1 of the Class would have the option of purchasing or renting a cable box from the manufacturer
2 or vendor of their choice in coordination with the services purchased from Cox.
- 3 28. The choice to use other cable boxes is not available to Plaintiff or members of the Class because
4 of Cox's tying the premium cable services to rental of the cable boxes. In addition, Cox refuses
5 to sell the cable boxes to its customers thereby forcing customers to pay monthly rental fees
6 which, within a number of months, exceed the value of the cable box. Thus, by tying the
7 premium services to the cable box, Cox forces Plaintiff and members of the Class to pay a
8 significantly higher sum for cable television than would be required if the two products
9 remained distinct.
- 10 29. Plaintiff believes that Cox purchases the cable boxes from manufacturers such as Motorola and
11 Scientific Atlanta, at a fixed and relatively low cost only to turn around and rent those boxes to
12 members of the Class, with full knowledge that the members of the Class, because of Cox's
13 improper conduct, have no choice but to pay the rental fees charged by Cox.
- 14 30. Plaintiff believes that the cable box market involves a significant amount of interstate
15 commerce.

16 CLASS ACTION ALLEGATIONS

- 17 31. Plaintiff brings this class action on behalf of all similarly situated persons, pursuant to Federal
18 Rule of Civil Procedure 23(b)(1,2 and 3).
- 19 32. The proposed Plaintiff Class is defined as follows:
- 20 All persons in the United States who subscribe or have subscribed to Cox for premium cable
21 television services and pay or have paid an additional monthly fee for the accompanying cable
22 box and/or converter box.
- 23 33. **NUMEROSITY:** Members of the Class are so numerous that their joinder would be
24 impracticable. The Class includes millions of individual customers of Cox. The precise number
25
26
27
28

1 of Class members and their identities are unknown to Plaintiff but are well known to Cox and
2 can easily be determined through discovery. Judicial economy favors a class action mechanism
3 instead of forcing each class member to bring a separate action individually. The relatively
4 small amount of individual damages of each class member makes it economically infeasible for
5 each Class member to bring a separate action.
6

7 **34. COMMONALITY:** Common questions of law and fact predominate over any individual
8 questions of separate Class members. The common questions of law and fact include, but are
9 not limited to, the following:
10

- 11 a. Whether Cox violated United States antitrust law;
- 12 b. Whether Cox's charging of rental fees for cable boxes in addition to the charging of
13 premium cable services fees constitutes an unlawful tying arrangement;
- 14 c. Whether Cox's actions have caused damages to Plaintiff and members of the Class;
- 15 d. Whether Cox should be enjoined from further violations of federal antitrust laws; and
- 16 e. Whether Cox is liable to Plaintiff and members of the Class for treble damages as a result of
17 its violation of federal antitrust laws.
18

19 **35. TYPICALITY:** Plaintiff's claims are typical of the claims of the Class members. Plaintiff and
20 all Class members have been injured by the same wrongful practices engaged in by Cox.
21 Plaintiff's claims arise from the same practices and course of conduct that gives rise to the
22 claims of the Class members and are based on the same legal theories.
23

24 **36. ADEQUACY:** Plaintiff will fully and adequately assert and protect the interests of the Class.
25 Plaintiff has retained counsel who is experienced in class actions and complex mass tort
26 litigation. Neither Plaintiff nor his counsel have interests contrary to or conflicting with the
27 interests of the Class.
28

1 37. **SUPERIORITY:** A class action is superior to all other available methods for the fair and
2 efficient adjudication of this lawsuit because individual litigation of the claims by each of the
3 Class members is economically unfeasible and impractical. While the aggregate amount of the
4 damages suffered by the Class is in the millions of dollars, the individual damages suffered by
5 each of the Class members as a result of the wrongful conduct by Cox are too small to warrant
6 the expense of individual lawsuits. Even if the individual damages were sufficient to warrant
7 individual lawsuits, the court system would be unreasonably burdened by the number of cases
8 that would be filed.
9

10
11 38. Plaintiff does not anticipate any difficulties in the management of this litigation.
12

13 COUNT I
14 VIOLATION OF THE SHERMAN ANTITRUST ACT
15 UNLAWFUL TYING

16 39. Plaintiff incorporates each of the preceding paragraphs as is fully set forth herein at length.

17 40. The Sherman Antitrust Act makes it unlawful to enter into a contract in restraint of trade or
18 commerce. 15 U.S.C. § 1. Congress has granted a private right of action to individuals harmed
19 by violations of this Act. 15 U.S.C. § 15.

20 41. Plaintiff, on his own behalf and on behalf of the Class, seeks to recover damages suffered as a
21 result of Cox's violation of the Sherman Antitrust Act.

22 42. Cox improperly ties its premium cable services with the required rental of a cable box.
23 Specifically, Cox contracted with Plaintiff and all Class members to provide premium cable
24 services but only on the condition that Plaintiff and all Class members also pay a monthly rental
25 fee to Cox for a cable box necessary to view and use the premium services.
26

27 43. No member of the Class, including Plaintiff, can unbundle or untie the two products, i.e.,
28 premium cable services and a cable box.

1 44. As a result, Plaintiff and all Class members are forced to pay rental fees for the cable box in
2 addition to the increased fees they pay for premium cable services. Cox's conduct is even more
3 egregious given that Cox is the third largest provider of cable services in the United States. In
4 fact, in many areas of the country, it is believed that Cox is the sole provider of cable services.
5

6 45. At all times relevant hereto, Cox has maintained and exerted sufficient economic and market
7 power to coerce Plaintiff and members of the Class to pay rent for the cable box and accept the
8 tied products.
9

10 46. Cox's improper tying of the cable box to the premium cable service harms competition. Upon
11 information and belief, the cable box market is dominated by two manufacturers, both of which
12 sell products to Cox. Since Plaintiff and the Class members can only rent a cable box directly
13 from Cox, there is little incentive for other manufacturers to enter the market, and those that do
14 are precluded from renting or selling their products to Plaintiffs and members of the Class at
15 lower, market-driven prices.
16

17 47. There is a market for cable boxes separate and apart from the Cox premium cable services; the
18 two products are separate and distinct products. In fact, an individual can find cable boxes for
19 sale on the open market today, but Cox refuses to permit a customer to use his own cable box
20 when subscribing to Cox's premium services.
21

22 48. At all times relevant hereto, Cox has maintained sufficient power in the cable market to force
23 Plaintiff and members of the Class to accept the rental agreement which they otherwise would
24 not accept absent Cox's extraordinary economic and market power.
25

26 49. Cox's conduct has a substantial impact o interstate commerce in the market for cable boxes.

27 50. Cox's bundling and tying of premium cable services and the cable box is an unreasonable
28 restraint of trade in violation of the Sherman Antitrust Act.

1 51. Cox's conduct has been, and continues to be, the direct cause of damage to the Plaintiff and
2 members of the Class.

3 52. There is no lawful business justification for Cox's conduct.
4

5 PRAYER FOR RELIEF

6 WHEREFORE, Plaintiff, individually and on behalf of the members of the Class, demands
7 judgment in his favor and against Defendants as follows:

- 8 a. For an Order certifying the Class pursuant to Federal Rule of Civil Procedure 23
9 appointing Plaintiff as the representative of the Class, and appointing counsel for
10 Plaintiff counsel for the Class;
11
12 b. For an Order that Cox violated the Sherman Antitrust Act, 15 U.S.C. § 1;
13
14 c. For an Order enjoining Cox from continuing the practice of tying premium cable
15 services to the rental of a cable box from Cox;
16
17 d. For an award of all compensatory and other damages suffered by Plaintiff and members
18 of the Class;
19
20 e. For an award of all statutory damages under the Sherman Antitrust Act;
21
22 f. For an award of all costs incurred by Plaintiff in pursuing this action;
23
24 g. For an award of reasonable attorneys' fees; and
25
26 h. For any other relief the Court deems reasonable.
27
28

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JURY DEMAND

Plaintiff demands a trial by jury on all factual issues.

Dated: April 2, 2009.

/s/ Glen J. Lerner, Esq.
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